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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|-----------------------|---------------------|------------------|
| 10/025,214 | 12/18/2001 | Michael John Niemeyer | KCC-15,750 | 4970 |
| 35844 | 7590 | 08/10/2004 | EXAMINER | |
| PAULEY PETERSEN & ERICKSON 2800 WEST HIGGINS ROAD HOFFMAN ESTATES, IL 60195 | | | COLE, ELIZABETH M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1771 | |

DATE MAILED: 08/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/025,214 | Applicant(s) NIEMEYER ET AL. e | |
| | Examiner Elizabeth M. Cole | Art Unit 1771 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-25,27-40 and 42-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-25,27-40 and 42-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1771

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/25/04 has been entered.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3-6, 8, 10-11, 16, 19-21, 23, 24-25, 27, 29, 30 are rejected under 35

U.S.C. 103(a) as obvious over Putzier, U.S. Patent No. 5,262,218 in view of GB 1,231,648.

Putzier discloses an absorbent material comprising an absorbent core which may comprise pulp and superabsorbent particles, (col. 3, lines 46-58, col. 4, lines 20-44), a complete wrapper which encompasses the absorbent core which comprises a fibrous material such as a cotton-type material, (col. 4, line 65 – col. 5, line 10), and a binder material for stabilizing the wrapper, (col. 2, line 48). Figure 2 shows that the wrapper overlaps itself at the bottom portion of the absorbent article. Although Putzier does not disclose the amount of absorbency which is contributed to the absorbent material by the wrapper, it is reasonable to presume that the Putzier material would

Art Unit: 1771

meet the limitations of the claims. Support for this presumption is found in the fact that Putzier employs the same materials and because plant-based fibers such as cotton are well known as being absorbent. In the alternative, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have selected the thicknesses and relative proportions of the components in order to arrive at a material having the desired absorbency through the process of routine experimentation. With regard to the limitation that the wrapper comprises a mixture of absorbent material and binder, since the wrapper comprises both elements, it would inherently comprise a mixture of the two. Also, GB 1,231,648 teaches that when stabilizing binders are added to fibers by means of spraying, dipping or coating, the combination of binder and fibers forms a mixture. See page 2, lines 37-41. With regard to the amount of binder employed, Putzier does not teach the particular amount of binder, however it would have been obvious to have selected the particular amounts of binder through the process of routine experimentation, in order to arrive at an amount of binder which provided sufficient strength and stability to the wrapper material without using excess binder which would be expensive, wasteful and could potentially have a negative effect on the hand, absorbency, etc of the wrapper material. Further GB, '648 teaches employing from 10-60 weight percent binder in order to form a product which is sufficiently strong. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed from 10-60 weight percent binder motivated by the expectation that this would form a sufficiently strong product.

5. Claims 1-14, 16-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/17695 to Everett et al in view of GB 1,231,648. Everett et al discloses an absorbent material which comprises an absorbent core which may be zoned to have different levels of absorbency,

Art Unit: 1771

and which may further comprise binders and superabsorbent materials. See page 20, lines 1-15, 26-33 and page 21. Everett et al teaches that the absorbent core may be encased in a wrapper which preferably comprises an absorbent material. See pages 23-25. Everett et al differs from the claimed invention because Everett et al does not specifically teach that the wrapper comprises a binder, and does not disclose the amount of absorbency which is contributed to the absorbent material by the wrapper. With regard to the binder, Everett et al teaches that absorbent tissue may be used as the wrapper material. GB '648 teaches that non-irritating binders may be applied to tissues which are incorporated into absorbent articles such as diapers in order to enhance the strength of the tissues. See col. 3, lines 22-42. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed a binder as taught by GB '648 with the wrapper of Everett. One of ordinary skill in the art would have been motivated to employ a binder in order to enhance the strength of the tissue which is wrapped around the absorbent core of Everett et al. . With regard to the limitation that the wrapper comprises a mixture of absorbent material and binder, since GB '648 that combining the binder and the fibers forms a mixture. See page 2, lines 37-41. With regard to the amount of binder used, it would have been obvious to have selected the particular amounts of binder through the process of routine experimentation, in order to arrive at an amount of binder which provided sufficient strength and stability to the wrapper material without using excess binder which would be expensive, wasteful and could potentially have a negative effect on the hand, absorbency, etc of the wrapper material. . Further GB, '648 teaches employing from 10-60 weight percent binder in order to form a product which is sufficiently strong. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have

Art Unit: 1771

employed from 10-60 weight percent binder motivated by the expectation that this would form a sufficiently strong product.

6. Claims 15, 34, 35-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Everett in view of GB 1,231,648 as applied to claims 1-14, 16-33 above, and further in view of Rosch et al, U.S. Patent No. 6,009, 558. Neither Everett nor GB'648 teach swimwear incorporating an absorbent material. Rosch teaches that swimwear may be formed so that it incorporates an absorbent core. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated an absorbent core as taught by Everett into the swimwear of Rosch. One of ordinary skill in the art would have been motivated to employ the absorbent core of Everett because it is disclosed as having excellent liquid absorbing and holding properties.

7. Applicant's arguments filed 3/25/04 have been fully considered but they are not persuasive. Since Putzier does not disclose the claimed amount of binder, Putzier does not anticipate the claims. Therefore, the 102(b) rejection is withdrawn in view of applicant's amendment incorporating the amount of binder into the claims. Applicant's argument that applying a binder to a fibrous material does not result in a mixture is addressed in the rejection above, by the combination with GB '648 which teaches that applying binders to fibers does result in a mixture. With regard to the amount of binder used, since the amount of binder is a result effective variable, in that the amount of binder is necessarily going to be directly related to the strength and stability of the material to which the binder is applied, it would have been obvious to have optimized the amount of binder in order to form a sufficiently strong and stable

Art Unit: 1771

material without using extra binder. Further, GB '648 suggests the desirability of employing the claimed amount of binder as set forth above in the art rejections.


8. With regard to the combination of Everett in view of GB '648, Applicant argues that GB '648 does not disclose tissue per se. However, GB '648 discloses fibers which are held together with a binder, which is what a tissue is. Everett already teaches a wrapper for an absorbent material wherein the wrapper comprises an absorbent material. Everett merely lacks the teaching regarding the use of a binder, but discloses employing absorbent tissue as the wrapper. GB '648 discloses employing a binder to stabilize the fibers in an absorbent material.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

Inquiries of a general nature may be directed to the Group Receptionist whose telephone number is (571) 272-0994.

The fax number for all official faxes is (703) 872-9306.



Elizabeth M. Cole
Primary Examiner
Art Unit 1771

e.m.c